

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Case No. 09-50967

GLENN E. STEWART,
CONSUELA V. STEWART,

Chapter 13

Judge Thomas J. Tucker

Debtors.

**ORDER DENYING, AS UNNECESSARY, DEBTORS' MOTION TO
EXTEND THE AUTOMATIC STAY**

This case is before the Court on "Debtors' Motion To Extend The Automatic Stay Provisions of 11 U.S.C. § 362 Pursuant to 11 U.S.C. § 362(c)(3)(B) and 11 U.S.C. § 362(c)(3)(C)," filed on April 9, 2009 (Docket # 8). The Court must deny the motion because it is unnecessary. 11 U.S.C. § 362(c)(3) does not apply in this case, and thus the automatic stay will not terminate under that section.

Section 362(c)(3)(A) provides:

(3) if a single or joint case is filed by or against debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)

(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case;

11 U.S.C. § 362(c)(3)(A). This provision does not apply to this case because Debtor did not have any case "pending" within the 1-year period before filing this case **that was dismissed**.

Debtors filed a voluntary petition for relief under Chapter 13 on April 9, 2009, initiating

this case. This is Debtors' third bankruptcy case.

Debtors filed their first case on August 17, 2005, Case No. 05-66154 (Chapter 7). The Court granted Debtor a discharge in that case on November 29, 2005 and closed the case. Therefore, that case was not pending within the one year of filing this case, nor was it dismissed.

Debtors filed their second case (Case No. 06-58887)(filed as a Chapter 13, later converted to Chapter 7) on December 19 2006. That case was closed without a discharge on April 8, 2009, after the Court denied the Debtors' discharge in an Order filed March 18, 2009 (Docket # 65), based on 11 U.S.C. § 727(a)(8). Therefore, while Debtor's second case was pending within one year before the filing of this case, it was not "dismissed" within the meaning of 11 U.S.C. § 362(c)(3).

For these reasons, Debtor's motion to extend the automatic stay, while no doubt filed out of an abundance of caution, is not necessary. The automatic stay will not terminate under § 362(c)(3)(A).

Accordingly,

IT IS ORDERED that "Debtors' Motion To Extend The Automatic Stay Provisions of 11 U.S.C. § 362 Pursuant to 11 U.S.C. § 362(c)(3)(B) and 11 U.S.C. § 362(c)(3)(C)" (Docket # 8), is DENIED as unnecessary.

Signed on April 10, 2009

/s/ Thomas J. Tucker
Thomas J. Tucker
United States Bankruptcy Judge